UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/4
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 January 1999]

GE.99-10476 (E)

The 1948 Genocide Convention and the struggle against racism

1. Genocide is the most extreme consequence of racial discrimination and hatred. Genocide is the destruction, wholly or in part, of a national, ethnic, racial or religious group as such. Therefore, as preparations for the Third World Conference on Racism begin, attention should be given to the full use of the available instruments and mechanism. The provisions of the Convention on the Prevention and Punishment of the Crime of Genocide provide a framework for action, as was recommended by the Commission on Human Rights in its resolution 1998/10, which emphasized the importance of speedy prevention and called upon all States to increase and intensify their activities aimed at the full implementation of the provisions of the Convention.

2. The Genocide Convention is a landmark in the efforts to develop a system of universally accepted standards which promote an equitable world order for all members of the human family to live in dignity. Four articles are at the heart of this Convention and are here quoted in full to understand the process of implementation proposed by the Association for World Education:

"Article II

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

"Article III

"The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

"Article IV

"Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

"Article VIII

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

3. The Genocide Convention was adopted on 9 December 1948 by the United Nations General Assembly, the day before the proclamation of the Universal Declaration of Human Rights. Yet even in the 1990s, numerous reports reached the United Nations of actual, or potential, situations of genocide; mass killings; cases of slavery and slavery-like practices, in many instances with a strong racial, ethnic and religious connotation - with children as the main victims, in the sense of article II (e) of the Convention; unilateral embargos imposed by certain Governments on the delivery of humanitarian aid for populations in grave need in areas affected by man-made disasters, with the consequences described in article II (b) and (c).

4. Despite factual evidence of these genocides and mass killings in the Sudan, the former Yugoslavia, Rwanda, Burundi, the Democratic Republic of the Congo, Sierre Leone and in other places, no Contracting Party to the Genocide Convention has called for any action under article VIII of the Convention.

5. The need for speedy preventive measures has been repeatedly underlined by United Nations officials. On 8 December 1998, in his address at UNESCO, United Nations Secretary-General Kofi Annan said:

"Many thought, no doubt, that the horrors of the Second World War - the camps, the cruelty, the exterminations, the Holocaust - could not happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in Rwanda. Our time - this decade even - has shown us that man's capacity for evil knows no limits. Genocide - the destruction of an entire people on the basis of ethnic or national origins - is now a word of our time, too, a stark and haunting reminder of why our vigilance must be eternal."

His words were repeated on 10 December 1998 by Mr. Vladimir Petrovsky, Director-General of the United Nations Office in Geneva at the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. In her address, "Translating words into action", to the General Assembly on 10 December 1998, the High Commissioner for Human Rights, Mrs. Mary Robinson, declared:

"The international community's record in responding to, let alone preventing, gross human rights abuses does not give grounds for encouragement. Genocide is the most flagrant abuse of human rights

imaginable. Genocide was vivid in the minds of those who framed the Universal Declaration, working as they did in the aftermath of the Second World War. The slogan then was 'never again'. Yet genocide and mass killing have happened again - and have happened before the eyes of us all - in Rwanda, Cambodia, the former Yugoslavia and other parts of the globe."

6. In a 1997 address at the Holocaust Memorial Museum in Washington, the United Nations High Commissioner for Refugees, Mrs. Sadaka Ogata, declared: "As we all know, genocide, characterized by the intent to destroy national, ethnic or religious groups is the most violent and pernicious form of human rights violations. Yet in the decades since the Holocaust, we have not been able to prevent or halt even the most brutal forms of violence against whole groups of people." Mrs. Ogata appealed to the international community to "be prepared to halt the worst evil at its source", adding: "We need a strong United Nations human rights machinery to prevent but also to expose violations of human rights". (International Herald Tribune, 6 May 1997).

7. On 10 December 1998, also at the Holocaust Museum in Washington, United States Ambassador-at-Large for War Crimes Issues David J. Scheffer delivered an Address at the Conference on "Genocide and crimes against humanity: early warning and prevention", in which he stated:

"We need to heed the warning signs of genocide. Officially-directed massacres of civilians of whatever numbers cannot be tolerated, for the organizers of genocide must not believe that more widespread killing will be ignored. 'Neutrality' in the face of genocide is unacceptable and must never be used to cripple or delay our collective response to genocide. The international community must respond quickly to confront genocidal actions. The consequences of genocide are not only the horrific killings themselves but the massive refugee flows, economic collapse and political divisions that tear asunder the societies that fall victim to genocide. The international community will pay a far higher price coping with the aftermath of genocide than if it were prepared to defeat genocide in its earliest stages. I have focused on genocide. History, however, teaches us that we have to be prepared to respond to situations of widespread or systematic killings, rape, or other abuses and that those deserve the same moral condemnation, criminal prosecution, and efforts to prevent and to punish that we give to the crime of genocide. Crimes against humanity can occur - and have occurred - in situations where the specific requirements of genocide have not been met. We must not underestimate their significance."

8. The lack of governmental action to prevent genocide in the past has led the Sub-Commission on Prevention of Discrimination and Protection of Minorities to request two reports prepared by its members, one by Mr. Nicodène Ruhashyankiko (E/CN.4/Sub.2/1978/416) and an updated report by Mr. Benjamin Whitaker (E/CN.4/Sub.2/1985/6 and Corr.1).

9. In his 1978 report, Mr. Ruhashyankiko proposed mechanisms for the study of information on genocide and genocidal practices. He wrote:

> "A number of allegations of genocide have been made since the adoption of the 1948 Convention. In the absence of a prompt investigation of these allegations by an impartial body, it has not been possible to determine whether they were well-founded. Either they have given rise to sterile controversy or, because of the political circumstances, nothing further has been heard about them. For these reasons, the Special Rapporteur feels that the Commission on Human Rights should consider the setting up of ad hoc committees to inquire into allegations of genocide brought to the knowledge of the Commission by a Member State or an international organization and supported by sufficient prima facie evidence" (para. 614).

10. Such an ad hoc body would also be well qualified to study examples of "direct and public incitement to commit genocide". The Genocide Convention, in its provisions concerning public incitement, sets the limits of political discourse. It is well documented that public incitement - whether by Governments or certain non-governmental actors, including political movements - to discriminate against, to separate forcibly, to deport or physically eliminate large categories of the population of a given State, or the population of a State in its entirety, just because they belong to certain racial, ethnic or religious groups, sooner or later leads to war. It is also evident that, at the present time, in a globalized world, even local conflicts have a direct impact on international peace and security in general. Therefore, the Genocide Convention is also a constant reminder of the need to moderate political discourse, especially constant and repeated accusations against a religious, ethnic and social category of persons.

11. The right to freedom of expression - upheld by article 19 of the Universal Declaration of Human Rights and by article 19.2 of the International Covenant on Civil and Political Rights - can be limited only in closely defined circumstances. "Hate-speech", unfortunately largely present in today's world, including some local mass media, despite the consequences described above, is not condemned by the international community with the necessary vigour and speed. There should therefore be universally agreed limits to forms of "expression" that are incitements to kill. These limits can be based on the principle set out in article 20.2 of the above-mentioned International Covenant: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". There should also be an internationally institutionalized channel for warning of hate-speech cases, especially when these involve the mass media, such as radio, television and the Internet, and instant international condemnation.

12. The ad hoc committee would be in a situation to reinforce constantly the outer limits of political discourse by investigation and public analysis of socio-political speeches, documents or founding charters of movements which blatantly spell out genocidal aspirations. While some non-governmental organizations have done useful work in monitoring hate and genocidal discourse in texts, in audio-visual media and on the Internet, public analysis must be carried out at the highest international level, which is the United Nations

system. Had this been done in Rwanda, with regard to the radio "Mille Collines", perhaps that premeditated and announced genocide could have been avoided or mitigated. (Two examples are analysed in written statements by the Association for World Education.) (E/CN.4/1997/NGO/85 and E/CN.4/Sub.2/1997/NGO/15.)

13. In addition to the possibility of setting up an ad hoc committee specifically devoted to genocide and direct and public incitement to commit genocide, there is also the possibility of using the procedures of the Committee for the Elimination of Racial Discrimination.

14. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination, in its article 4, condemns "all propaganda and all organizations which ... attempt to justify or promote racial hatred and discrimination in any form", obliging, in its article 4 (a), States parties to declare as "an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence, or incitement to such acts, against any race or group of persons". It also affirms, in article 4 (b), that States parties "shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law".

15. This Convention has set up a body of independent experts - the Committee for the Elimination of Racial Discrimination (CERD) - to examine reports by State parties. Through its urgent procedures mechanisms, CERD also has the possibility of taking early-warning measures aimed at preventing existing strife from escalating into conflicts, and to respond to problems requiring immediate attention.

16. On 21 March 1995, at a public United Nations round table, the then Chairman of CERD, Mr. Ivan Garvalov, indicated the connection between the 1948 Genocide Convention and the 1965 International Convention for the Elimination of All Forms of Racial Discrimination: "There is indeed a mechanism for CERD to act immediately under article 4 of its Convention in regard to any mass media appeals and to any other incitement to racial discrimination and violence leading to genocide". Since then, this link between the two Conventions has been under discussion and awaits its full implementation. The effectiveness of an implementary system depends on two things: the machinery set up for the task, and the will to make use of the machinery.

17. CERD (and the proposed ad hoc committees on genocide) should give particular attention to "direct and public incitement to commit genocide" in keeping with the growing need for early-warning mechanisms.

18. The Association for World Education also recommends:

(a) That - until the International Criminal Court has authority to act in such cases - States parties to the 1948 Genocide Convention should automatically invoke article VIII, whenever "direct or public incitement to commit genocide" is manifested by whomsoever;

(b) That the capacity of the CERD urgent procedures mechanisms be strengthened so that CERD may more fully investigate any direct and public incitement to commit genocide;

(c) That the Commission on Human Rights should establish urgently ad hoc committees "to inquire into allegations of genocide brought to the knowledge of the Commission by a Member State or an international organization and supported by sufficient prima facie evidence", as proposed by Special Rapporteur Mr. Ruhashyankiko in his 1978 report.

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